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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x
3 UNITED STATES OF AMERICA

4 v.

15 CR 73 (RMB)

5 EVGENY BURYAKOV

6 Defendant

-----x

7 New York, N.Y.
8 December 3, 2015
9 12:00 p.m.

10 Before:

11 HON. RICHARD M. BERMAN

District Judge

12 APPEARANCES

13 PREET BHARARA

14 United States Attorney for the
Southern District of New York

15 STEPHEN RITCHIN

16 EMIL J. BOVE III

BRENDAN QUIGLEY

Assistant United States Attorney

17 WHITE & CASE

18 Attorneys for Defendant Buryakov

19 SCOTT HERSHMAN

MARTIN SAWYER

20 KELLY SAWYER

21 -also present-

22 YANA AOUREEV, Interpreter (Russian) - standby

FC3QBURc

1 (In open court)

2 THE COURT: On the agenda today are a few things as
3 far as I'm concerned, one in principal which I will get to in a
4 minute, but I first want to go over our schedule.

5 Our trial is to start on April 4 at 9:00 a.m.
6 Pretrial submissions are due on March 1. And in the pretrial
7 submissions, I don't know if we discussed this at great length,
8 if at all, but what that includes is the joint jury
9 instructions, motions in limine, names and places that are
10 going to come up during the trial for the voir dire in
11 particular. I would invite questions if anybody wants tailored
12 to this case me to ask of prospective jurors. We will set as
13 responses if any motions in limine are filed, they would be due
14 a week later on 3/8. So it is somewhat of a tight timetable,
15 but I intend to make it.

16 Anybody have any questions about joint jury
17 instructions or any of that how that works? No? OK, great.

18 So then the principal item of business for today is
19 the defense application to take the deposition of
20 Mr. Buryakov's wife under Federal Rule of Civil Procedure 15.

21 I have some questions and concerns which I am going to
22 raise and which I would like to hear from the defense and the
23 government on each of these topics. I guess we would start
24 with the defense as to each of them and then the government
25 since it is the defense application.

FC3QBURc

1 My inclination, subject to what I hear from all of
2 you, is to allow a deposition, but also to do so without any
3 finding that the deposition will in fact be admitted or
4 admissible at the trial. That will be an issue for another
5 day. So any ruling by me today which I anticipate making would
6 not be a determination of admissibility.

7 Here are the concerns that your papers --
8 incidentally, I thought on both sides were very helpful -- but
9 there are still issues that I would like you each to cover; and
10 they are these: First of all, we have been discussing
11 Mr. Buryakov's wife. I would prefer to hear a little bit about
12 her apart from being his wife; her name, her education, her
13 work and where she lives just so we know who we are talking
14 about, and I don't want to keep referring to the defendant's
15 wife. In fact, whether she wishes to participate in a
16 deposition and in a trial and how we know that. So that would
17 be the first order of -- would you prefer to do one at a time
18 and respond or hear the list first?

19 MR. RITCHIN: Maybe hear the list.

20 THE COURT: So that is first.

21 The second question is one that I raised in the short
22 order that I issued. That has to do with the defendant
23 Mr. Buryakov's appearance, or lack of appearance, at any such
24 deposition also under the rule that encompasses issues such as
25 waiver, etc.

FC3QBURc

1 The third issue I would like both sides to cover, but
2 the government raises in its written submission the point of
3 view or the statements, rather, of Mr. Fritzlen of the State
4 Department. In his submission, he asserts that Russian
5 authorities do not recognize the authority or ability of
6 foreign, in particular, U.S. Attorneys, to take voluntary
7 depositions of willing witnesses even in criminal cases. So I
8 would like the government to expand on that when it speaks but
9 also to hear what the defense has to say about on that issue.

10 I am also wondering -- and this is perhaps getting
11 into more detail than we need to, but they are practical
12 issues -- in any such deposition who would be administering the
13 oath and what that oath would be and who would be advising the
14 deponent as to implications such as what it means to testify
15 under oath, penalty of perjury, etc. under our system.

16 And then lastly, the defense in its -- I believe it
17 was in its reply letter, I'm not sure -- yes, I believe that's
18 where it is -- talks about alternatives and says, among other
19 things, that the defendant is certainly prepared to discuss
20 potential arrangements for taking a deposition in Russia or
21 anywhere else in the world. And I assume that anywhere else in
22 the world would include the White & Case law offices in
23 London -- that just came to my mind -- which might eliminate
24 some of the difficulties or hurdles in concluding such a
25 deposition.

FC3QBURc

1 Anyway, that is what is on my mind, so I would like to
2 hear from defense counsel first.

3 MR. HERSHMAN: I will address each of your points,
4 your Honor, in the order that you gave them.

5 THE COURT: That would be great.

6 MR. HERSHMAN: So Marina Buryakov lives in Moscow,
7 Russia. She is the mother of two young children. I believe
8 she has a graduate degree from universities in Russia, at least
9 one.

10 THE COURT: In what field?

11 MR. HERSHMAN: I'm not exactly sure. It's a
12 law-related field.

13 THE COURT: Is she a lawyer?

14 MR. HERSHMAN: She is in Russia.

15 THE COURT: OK.

16 MR. HERSHMAN: But I am not sure how that translates
17 for us. She is not a practicing lawyer but she is someone who
18 understands the implications of her testifying and the oath and
19 perjury and so forth. So I was going to get to that in a
20 minute.

21 THE COURT: OK.

22 MR. HERSHMAN: She is willing to participate in the
23 deposition voluntarily and the trial but not in the United
24 States. As we indicated in our papers, she is not willing to
25 travel to the United States. Frankly, in terms of any

FC3QBURc

1 location -- I will get to that in a minute -- elsewhere, I will
2 address that when we talk about that point, but she is willing
3 to participate, and I know that from firsthand conversation
4 with her.

5 I think it is fair to say that I have explored
6 extensively her coming to the United States to testify at the
7 trial. We indicated in our papers her concerns as she
8 expressed them to me. I have tried many times, but at the
9 moment there is no change in her position.

10 THE COURT: I take you at your word for that.

11 MR. HERSHMAN: With respect to Mr. Buryakov's
12 appearance at the deposition, I think it is fair to say that he
13 would not mind attending the deposition in Moscow, but I don't
14 think that is practical. So he is prepared to waive his right
15 to be present at the deposition. I have not explored with the
16 government whether we would seek to have him participate by
17 Skype or some other means that are above my understanding as to
18 how they work. But even with respect to that, I did discuss it
19 with Mr. Buryakov, and he is prepared to waive that as well.
20 So there is no demand per se that he participate during the
21 live taking of the deposition, but I believe that he would
22 prefer to be involved by some means if that is possible, but he
23 is certainly prepared to waive that right formally.

24 THE COURT: Under the rule, the waiver would have to
25 be in writing I believe.

FC3QBURc

1 MR. HERSHMAN: Yes, and we are prepared to submit that
2 to you.

3 THE COURT: OK.

4 MR. HERSHMAN: We have commented on the government's
5 submission from the State Department representative, and in our
6 response I think we pointed out specifically that Mr. Fritzlen
7 admits that there is a method for requesting a deposition in
8 this case through letters rogatory, but also interestingly he
9 admits that if the government were to request a deposition,
10 then the request could come within the existing treaty between
11 the United States and Russia that appears in paragraph five of
12 his declaration attached to ECF 68 as Exhibit A.

13 I would say this with respect to that point, however.
14 It is somewhat speculative at this point that a deposition
15 could not be taken in Russia that satisfies any concerns that
16 the Court and/or the government may have about due process and
17 fairness and ability to participate, and it is kind of putting
18 the cart before the horse.

19 Clearly, we, the defense, under understand that the
20 deposition needs to be taken in a way in which the testimony
21 would be admissible at trial. I understand we are not dealing
22 with that today, and that's clear. But I don't want to go to
23 Moscow and take a deposition that is not usable in the trial.
24 The whole point here is to preserve Ms. Buryakov's testimony
25 because it is material to our defense. So I think we can work

FC3QBURc

1 with the government to assure the Court that all of the
2 essential elements of due process and fairness with respect to
3 the deposition will be adhered to. And in the very first
4 instance I would like to do that in Moscow, which brings me to
5 the next point -- well, the next point you made was the oath
6 and the issues of what it means to testify and perjury.

7 In the first instance, as mentioned, Ms. Buryakov has
8 a degree in law that allows her to understand, to my
9 satisfaction at least, the import of her testimony and the
10 nature of the proceeding in which she will be giving it and the
11 requirement that she needs to tell the truth and nothing but
12 the truth. I believe she understands that. I believe she
13 understands the consequences for not doing so. I would expect
14 that the oath would be administered by an officer of the court,
15 either a U.S. officer of the court or someone in Russia, but we
16 would have no objection to it being a U.S. court reporter if we
17 can arrange for one to do that or someone else that has the
18 authority to administer the oath.

19 I have advised Mrs. Buryakov repeatedly of the need to
20 tell the truth. I wouldn't object to anyone else advising her
21 of that as well before the deposition.

22 I am pretty confident given my interactions with her
23 that she will tell the truth and she understands the need to do
24 so. I would prefer to have her here live just to be clear.

25 THE COURT: Were you anticipating a video deposition?

FC3QBURc

1 MR. HERSHMAN: Yes, anticipating a video deposition.
2 yes. As far as deposition anywhere else, it does appear in our
3 footnote, I believe --

4 THE COURT: It appears in the text.

5 MR. HERSHMAN: And the text, yes. The government has
6 not approached us about any alternative venue. I did approach
7 them, however, about that, just to be candid, as recently as, I
8 guess it was, earlier in the week, Monday.

9 It is our preference and desire to have the deposition
10 in Moscow for a lot of different reasons. So I don't want to
11 minimize the import of the Court's ruling permitting a
12 deposition to be taken in Moscow. I think we should use best
13 efforts and good faith to accomplish that in the very first
14 instance.

15 To the extent that that is not able to happen for the
16 reasons I have already discussed, but, most importantly, any
17 ability to assure the Court that due process and fairness is
18 something that could be assured, I still would request that we
19 be able to take Ms. Buryakov's deposition in some location to
20 be determined if Moscow proves to be a venue that will not
21 work, but we haven't gotten there yet.

22 We haven't even advanced that ball very far with the
23 government, but I am not sure about London. I was going to get
24 to your point about London. White & Case has offices in many
25 jurisdictions, as the Court knows, all of which would be

FC3QBURc

1 available to us to conduct a deposition for sure. The question
2 is will Ms. Buryakov travel and leave her children. That is a
3 question that I guess we will raise with her if it is
4 necessary, but I am optimistic that we will be able to arrange
5 a deposition in Moscow that satisfies the essential criteria to
6 allow the deposition to be admissible.

7 I think it would be counterproductive and a waste of
8 everyone's time for us to go all the way to Moscow and take a
9 deposition without some assurances, on our part at least, the
10 defense, that we have a good reason for believing the
11 deposition would be admissible at trial. To do anything but
12 that makes no sense. So I would be prepared to represent to
13 the Court that we will try to ensure that the government has an
14 ability, for example, to ask questions and cross-examine
15 Mrs. Buryakov. We are putting a lot at stake --

16 THE COURT: What are the implications? It seemed to
17 me -- I don't know if politics is the word, but if you take a
18 deposition in a place in a country that doesn't recognize the
19 deposition, as it were, does that have any impact? If you
20 go -- I thought of London because I know you have a London
21 office. There are many places in Europe one could go to, and I
22 don't think London is all that far from Moscow.

23 MR. HERSHMAN: It's about a six-hour flight, five-hour
24 flight.

25 THE COURT: At most, I would say. But whatever. It

FC3QBURc

1 is what it is. You will talk to the government about that. It
2 seems to me it takes several things off the table that
3 otherwise may bear on the value of the deposition, as it were.
4 I assume it is in everybody's interest to have the deposition
5 as free of -- I'm not sure what the word -- free of taint,
6 let's say, in any way, right? Your point is well taken. Why
7 go there and go to all this trouble if it is not going to be
8 helpful.

9 MR. HERSHMAN: I agree, and we haven't gotten there
10 yet your Honor.

11 THE COURT: That is something you and the government
12 would talk about.

13 MR. HERSHMAN: Frankly, I think it may be possible, or
14 at least I'm optimistic that it would be possible, that we
15 could take a deposition that allows the government the
16 opportunity to cross-examine her and we could videotape it and
17 all of this permitted without any risk of it not being
18 admissible here. We haven't gotten to a point where we know
19 there is an obstacle. Speculative comments are not -- there is
20 no history of this where the deposition has been refused. So I
21 am willing to try.

22 THE COURT: The whole thrust of your application is
23 that this is a witness who -- and you've said and I assume you
24 would say -- wants to be deposed, wants her deposition to be
25 part of the trial, and the only thing she doesn't want is to

FC3QBURc

1 come to the United States. So presumably, why would it have to
2 be Russia? Why wouldn't it be Europe or couldn't it be Europe?
3 It seems to me it's not a big deal. You know everybody has to
4 make a little bit of a sacrifice.

5 MR. HERSHMAN: I hear you, your Honor.

6 THE COURT: A deposition doesn't take three weeks
7 either. So, whatever. I think that is something I'm sure you
8 will bear in mind.

9 MR. HERSHMAN: I think I have addressed all the
10 points.

11 THE COURT: Yes, you have.

12 MR. HERSHMAN: Thank you.

13 MR. RITCHIN: Good afternoon, your Honor. I think
14 most of the questions were for the defense so let me focus on
15 the one that really was addressed to the government, which
16 is --

17 THE COURT: Well, let's just see. So as to who the
18 deponent is, of course, that is not your question. And we take
19 counsel on his word that she wishes to be deposed and wishes to
20 be part of the trial through a deposition but just doesn't want
21 to come to the United States. She is presumably unwilling to
22 do that. That is one.

23 Two, the issue of Mr. Buryakov's appearance or not
24 seems to be quite solvable, and he is prepared to waive both
25 physical appearance and perhaps Skype or some other technology.

FC3QBURc

1 Now, as to the third point, Mr. Fritzlen, I think,
2 that is your issue. Is that where you were going to focus us?

3 MR. RITCHIN: Yes, that was.

4 THE COURT: OK.

5 MR. RITCHIN: Let me just begin by saying that I think
6 a lot of what you heard from the defense is sort of hopes and
7 optimism but no real showing as to what would in fact happen.

8 Let me give you some facts which I think do have a
9 bearing on what would happen. Just to set the context as to
10 why the government has some concern about the procedures that
11 would be applied in a deposition such as this, the Court should
12 be aware that the U.S. Attorney whose name is on this
13 indictment is, according to the Russian Federation,
14 persona non grata in that country. In 2013 the Russian
15 Federation issued what they referred to as their Guantanamo
16 list of alleged violators of human rights, and on that list was
17 Preet Bharara who is the name at the bottom of the indictment
18 in this case.

19 According to the Russian Federation, Mr. Bharara has
20 prosecuted and been instrumental in convicting and imprisoning
21 suspects who the U.S. has unilaterally determined to be threats
22 to U.S. security and has illegally detained and brought to New
23 York most on flimsy or circumstantial evidence. So that is
24 their view of the head of the prosecuting office.

25 In addition, that list contained 18 names, eight of

FC3QBURc

1 them or almost half were current or former employees of the
2 U.S. Attorney's office, including the Assistant U.S. Attorney
3 who is supervising this case. So I think that as well gives
4 some sense of the Russian Federation's view of the prosecution
5 office here.

6 In addition, the Russian Federation put on its list of
7 alleged human rights violators an agent with the FBI which is
8 the investigating agency in this case. To give you some sense
9 of the Russian Federation's view of how justice is conducted in
10 this courthouse, Judge Rakoff of this district is also on the
11 Guantanamo list of alleged human rights violators. He is said,
12 according to the Russian Federation, to be largely responsible
13 for the illegal prosecutions and detentions of prisoners
14 illegally captured overseas as part of the U.S. practice of
15 entrapping suspects in foreign countries, and in the case of
16 Viktor Bout, a third country, and then illegally kidnapping and
17 transporting them to the U.S. where they stand trial in New
18 York.

19 So, this is part of a backdrop for the government's
20 concerns about procedures that might be employed should we take
21 a deposition in Russia.

22 Let me also say that those concerns are present to an
23 even greater degree in this case than they would be in an
24 ordinary criminal case because the defendant here is alleged to
25 be an agent of Russia's foreign intelligence service making

FC3QBURc

1 this from their perspective, I would think, a particularly
2 sensitive prosecution.

3 Just with respect to how courts have looked at these
4 types of concerns, the Second Circuit in the Salim case said:

5 Foreign laws do not always permit witnesses to be
6 deposed in the manner in which American courts and lawyers are
7 accustomed. In certain cases, the use of unconventional
8 foreign methods of examination may exceed the limits of
9 accepted American standards of fairness and reliability such as
10 underlie the confrontation clause and the rule against hearsay.
11 Concerns of this type are addressed best on a case-by-case
12 basis.

13 The government submits that in this case, given
14 Russia's announced antipathy to the prosecuting office and the
15 fact that defendant is alleged to have been a Russian
16 intelligence officer, those concerns are subject to or merit
17 substantial weight.

18 Now, with respect to Mr. Fritzlen's declaration and
19 the issue of whether the deposition can in fact be taken, let
20 me start with something that the defense mentioned both in
21 their papers and just now, which is the idea that this
22 deposition can be taken under the Mutual Legal Assistance
23 treaty between the United States and Russia. Let me just say
24 that that suggestion is an invitation to error.

25 As Mr. Fritzlen said in the paragraph that was cited

FC3QBURc

1 by the defense: Assistance under this agreement is available
2 only to the prosecution. The treaty provides that this treaty
3 is intended solely for cooperation and legal assistance between
4 the parties, the parties being the United States and Russia.
5 The provisions of this treaty shall not give rise to a right on
6 the part of any other persons to obtain evidence. That is at
7 Article 1, Section 4.

8 Similar or identical language in other mutual legal
9 assistance treaties has been the subject of review by various
10 courts, and to the government's knowledge, they have uniformly
11 determined that such treaties cannot be used to obtain a
12 deposition of a defense witness.

13 Let me just point the Court to three cases. There is
14 *United States v. Sedaghaty*, which is at 728 F. 3d 885, and the
15 relevant discussion is at 916 through 917. That is a Ninth
16 Circuit case from 2013 in which there was a request to order
17 the government to use a mutual legal assistance treaty with
18 Egypt for the benefit of a defendant which the court said fails
19 under the express terms of the treaty and the district court
20 had no authority to order the executive branch to invoke the
21 treaty process to obtain evidence abroad for a private citizen.

22 Similarly, in *U.S. v. Jefferson*, which is an Eastern
23 District of Virginia case from 2009, reported at 594 F. Supp.
24 2d 655, the Court wrote: Courts have consistently held that
25 MLA treaties with such causes create no rights in individual

FC3QBURc

1 defendants to force the government to request evidence under
2 the MLA treaty procedure.

3 *U.S. v. Rosen*, another case from the Eastern District
4 of Virginia reported at 240 F.R.D. 204 is to the same effect.
5 In that case it was a treaty between the United States and
6 Israel containing the same language.

7 Let me also mention, because I think it is relevant
8 for the Court's considerations, the two cases the defense cited
9 in their papers in which the Court had authorized a deposition
10 in Russia. That is the *Egorov* case and the *Bortnick* case. It
11 is certainly true, as the defense has said, that depositions
12 were authorized in those two cases in the first
13 what was then the USSR and the second in Russia, but that is
14 only part of the story. I think we have to look at what
15 happened thereafter.

16 In the *Egorov* case, there was an opinion some months
17 later in which the Court said that the letters rogatory he sent
18 appropriate judicial authorities in the USSR were returned
19 unanswered. That's at 232 F. Supp. 732, Eastern District of
20 New York 1964.

21 And in the *Bortnick* case in which a single deposition
22 in Russia was authorized, there is no published opinion that I
23 was able to find which describes what happens thereafter. But
24 I spoke to the now former prosecutors who handled the case, and
25 their recollection is that the deposition never occurred; that

FC3QBURc

1 the witnesses --

2 THE COURT: It never occurred?

3 MR. RITCHIN: Never occurred; that the witness who was
4 in Russia was one of a group of witnesses and that some portion
5 of that group of witnesses despite having said initially that
6 they were unwilling to come to the United States, changed their
7 minds, came to the United States, and it never happened. Since
8 White & Case was one of the law firms representing the
9 defendant, I'm sure that if their recollection is wrong, the
10 defense will correct me.

11 This experience in these cited cases is consistent
12 with what Mr. Fritzlen has said. There is a moratorium on
13 judicial cooperation between the United States and the Russian
14 Federation. The experience of the State Department is that the
15 method for obtaining a deposition in Russia is to submit a
16 letters rogatory and that those letters rogatory are
17 consistently returned unexecuted.

18 With respect to the notion that we could just walk in
19 and take a deposition on our own, that is something that would
20 subject agents of the United States Government to potential
21 arrest. And so that I think is not an avenue that can be
22 pursued.

23 This experience is also consistent with the experience
24 of those who handled U.S./Russia matters for the government. I
25 spoke not only with Mr. Fritzlen but with a person at the

FC3QBURc

1 Department of Justice's Office of International Affairs who
2 handled Russian matters, and no one is aware of a deposition
3 having been taken in Russia in a criminal case for at least the
4 last decade.

5 Let me just add one other thing, which is, as a
6 practical matter, we, the prosecutors, in order to go to Russia
7 would need what's called country clearance from the State
8 Department, and it is not at all clear that we would get it.

9 So I lay all these things out to suggest to the Court
10 that while there may be optimism that all of these are
11 obstacles that can be overcome, history suggests otherwise.

12 THE COURT: OK.

13 MR. RITCHIN: And if history is all of a sudden
14 reversed for this case, that raises other questions.

15 THE COURT: I got it.

16 MR. RITCHIN: So --

17 THE COURT: You had two more topics.

18 MR. RITCHIN: OK.

19 THE COURT: One was your experience -- these might be
20 minor -- administering the oath and the idea of penalty and
21 perjury, etc.

22 MR. RITCHIN: The short answer is we have no idea.
23 The *Oudevenko* case makes reference to the fact that at least as
24 of that time, what the Russians were saying was that it would
25 be a Russian official who had to ask the questions. Since we

FC3QBURc

1 have no history of depositions in Russia, we don't know who
2 would administer the oath.

3 THE COURT: Do you have experience of depositions in
4 other countries?

5 MR. RITCHIN: Yes. And in other countries, it varies.
6 Sometimes it's a U.S. consular official, sometimes it's a
7 private party, sometimes it's an official of the government of
8 that country. So it varies. But what would happen here there
9 is simply no track record that I am aware of in a criminal case
10 that can give the Court any assurance that the administration
11 of the oath would be done by any particular party.

12 With respect to alternatives, obviously much of what I
13 have just said doesn't apply to a deposition in the United
14 Kingdom, for example, to follow up on what the Court had
15 proposed as an alternative.

16 THE COURT: I was just aware that of course White &
17 Case has an office there, and I'm sure in other places. So
18 what I probably inarticulately expressed before about we would
19 want a deposition that -- I used the word taint. A better way
20 to say it by me is that we want to ensure always the integrity
21 of the process so the process, in particular the deposition,
22 but more to the point would be the trial of the case in which
23 presumably the deposition would be utilized. So that is really
24 at the heart of my concern.

25 I was not aware of all the points that you brought

FC3QBURc

1 out, but from reading your papers to the conclusion that at
2 least preliminarily the integrity of the process was definitely
3 an issue to be concerned about. But, as I say, not in all the
4 detail that you mentioned, so that is helpful. That is why I
5 was happy to suggest that there may be ways to avoid these
6 issues without great stress, particularly, as I said, since the
7 only concern that has been voiced was by the deponent and was:
8 "I would like to be deposed and I would like for my deposition
9 to be used in a trial in this case. I just don't want to go to
10 the United States." So that leaves open a wide variety of
11 alternatives in my opinion that obviate these concerns which I
12 think are sincere concerns and genuine concerns, and also
13 accommodates the defense who wants to have this deposition.

14 MR. RITCHIN: May I just suggest one other thing?

15 THE COURT: Yes.

16 MR. RITCHIN: Which is that if the witness is prepared
17 to leave Russia to go to London or wherever, then the reasons
18 for her unavailability really boil down to a discomfort with
19 coming to the United States. I don't know exactly what the
20 concerns are because they've never been expressed with
21 particularity, just that she is uncomfortable with coming to
22 the United States based, in part, on the experience of her
23 husband; but if the witness were to express exactly what she is
24 concerned about, there may be something that we can do to
25 alleviate those concerns. If she is concerned about something

FC3QBURc

1 in particular that might happen to her in the United States, we
2 can certainly explore whether we can assure her that that thing
3 or those things wouldn't happen.

4 THE COURT: OK.

5 MR. RITCHIN: And then we would be in the position
6 where she could come and testify at trial, the jury could see
7 her demeanor, and we would be in the preferred position of
8 having a witness who actually testifies at the trial as opposed
9 to the exceptional circumstances of having a deposition.

10 THE COURT: Right. So where that leads me is here
11 which is where I thought I was going to come out in any event.
12 Would I like to see -- not like; that is the wrong word --
13 would I be inclined, as I said initially, to grant the defense
14 application for a deposition? Yes. Without, again, ruling on
15 the ultimate admissibility of the deposition at trial. That
16 would be an issue for another day. So it would be a device to
17 preserve the testimony. Perhaps you could persuade them in a
18 meet-and-confer with Mr. Hershman that the witness' concerns
19 can be accommodated.

20 So I think there are enough options here on the table.
21 I don't want to rule that I am directing that a deposition in
22 Russia take place. I am inclined to say that a deposition
23 should happen and I would like to see you meet and confer and
24 see if you can come up with a venue, for one, because venue
25 here is more than just convenience. Venue goes to some of the

FC3QBURc

1 issues that I am putting under the rubric of the integrity of
2 the process, both the deposition itself and ultimately if there
3 were one deposition, its use at trial. I would like to avoid
4 any negative impact on the integrity of the process.

5 So what I am going to suggest is really as far as I
6 would like to go today, I would like to see if you two can work
7 something out, as it were, and then I will combine what you
8 propose to me with a ruling at that time if that works for you.

9 MR. RITCHIN: Your Honor, happy to do so. As you
10 know, the government has taken the view that the materiality
11 showing has not been made. I'm happy to expand on that if the
12 Court would like to hear.

13 THE COURT: Let me just cut you short. I get it. I
14 understand, I think, the arguments on both sides. I think I am
15 inclined to be able to get over that issue for the purpose just
16 of preserving testimony sufficiently in advance of trial
17 without getting into, again, as I say for admissibility. I
18 understand your issue on materiality too.

19 The defense in its papers, as you know, suggests that
20 the testimony that is proposed would be exculpatory to the
21 defendant and has made, I think, a sufficient showing that it
22 could be, in any event. I don't know if it would be, so I
23 think I can get over the materiality question.

24 But let's see what you all come up with. And you tell
25 me what is a reliable or a reasonable time frame for you to

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1 come back.

2 Can you go off the record and consult with
3 Mr. Hershman?

4 (Recess)

5 MR. RITCHIN: If it is suitable for the Court's
6 schedule, perhaps we could come back on the 21st or 22nd of
7 December. It's a little over two weeks away.

8 THE COURT: You know as well as I in terms of working
9 this out. If that is what you need, that's fine.

10 MR. RITCHIN: I think it is really the defense who
11 needs the time.

12 THE COURT: I am thinking -- whatever.

13 MR. HERSHMAN: We get it. I am going to try my
14 best -- I just don't want to come back and say we need five
15 more days.

16 THE COURT: I get it. If you all can do 9:00 on the
17 21st, I have that time available. I will make every effort,
18 and I know you will too, to make sure Mr. Buryakov could be
19 present at 9:00. That's a little earlier than we usually
20 start.

21 Two related questions. I didn't mention for the
22 record that we had, as we always do here, a standby Russian
23 interpreter for these proceedings. The practice has been until
24 now that Mr. Buryakov has not availed himself in this
25 proceeding today. But in case he wanted to and needed to, that

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1 the interpreter will be available.

2 This is just an informational question. I take it --
3 well I don't take anything -- would the deposition if it came
4 about be in English or in Russian or with interpreters or what?
5 Have you thought about that?

6 MR. HERSHMAN: Yes. We would need to use an
7 interpreter.

8 THE COURT: Which you all would arrange as part of
9 your discussions? OK. So December 21, unless I hear from you
10 sooner, at 9:00 a.m. and you will give me your findings. If
11 you have them in advance and you wanted to send me a letter,
12 that would be helpful. It would speed things along. It would
13 speed my analysis along if you did or didn't work something
14 out. OK? Great. This was very helpful today. I think we
15 have time excluded until the trial date already.

16 MR. RITCHIN: Yes.

17 THE COURT: So there is no need to be concerned about
18 that today. Nice to see you all.

19 MR. RITCHIN: Thank you, your Honor.

20 (Adjourned)
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